



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC 20460**

OFFICE OF WATER

August 15, 2014

Christopher C. Horner, Esq.
Free Market Environmental Law Clinic
1489 Kinross Lane
Keswick, Virginia 22947

Mr. Craig E. Richardson
Environmental and Energy Publishing, LLC
122 C Street, N.W.
Suite 722
Washington, DC 20001

RE: Freedom of Information Act Request Nos. EPA-HQ-2014-0004759, EPA-R3-2014-004771, EPA-HQ-2014-001664 & EPA-R3-2014-004011

Dear Mr. Horner and Mr. Richardson:

This is an interim response to your series of Freedom of Information Act (FOIA) requests for documents containing certain terms identified in your requests including the words "selenium" and "conductivity" during the period spanning from November 1, 2010 through January 30, 2011.

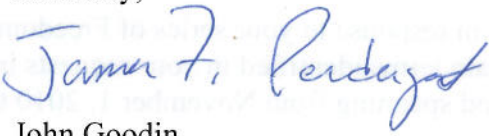
- Selenium Requests: EPA HQ-2014-001664 & EPA-R3-2014-004011 were received by EPA on December 5, 2013 and February 21, 2014, respectively. You submitted a fee waiver request with each request, both of which were denied by EPA's FOIA Office on December 13, 2013 and March 7, 2014, respectively. You filed an administrative appeal of both denials, on December 20, 2013 and March 17, 2014, respectively. The Office of General Counsel denied your appeals on March 7, 2014 and April 15, 2014, respectively. On March 25, 2014 the EPA requested an assurance of payment in order to continue processing both requests, consistent with agency regulations. On March 31, 2014, EPA produced its first interim production of responsive records to you via email. You filed a complaint related to the denial of your fee waiver request for each request on April 1, 2014 and April 23, 2014, respectively.

- Conductivity Requests: EPA-HQ-2014-004759 & EPA-R3-2014-004771 were received by EPA on March 18, 2014. EPA denied your requests for a fee waiver by letters dated April 11, 2014 and April 15, 2014. Also on April 15, 2014 the EPA requested an assurance of payment in order to continue processing both requests, consistent with agency regulations. EPA received your appeals of the fee waiver denials on April 28, 2014. The Office of General Counsel denied your appeals on May 27, 2014.

Following the above procedural history, and in light of the fee waiver litigation you initiated, you agreed to provide EPA with conditional assurance of payment on May 30, 2014 for all four requests so that EPA could resume processing the requests while the litigation proceeds. EPA also agreed to provide an interim production by August 15, 2014, which is being provided here. This interim production contains a subset of responsive documents that are largely being released to you in full. A small number of documents have been partially withheld pursuant to Exemptions 5 and 6, 5 U.S.C. §552(b)(5) & (6). These portions are exempt from disclosure because they are predecisional and deliberative and would harm agency decision making if released (DPP) or contain personal information which would be an unwarranted invasion of personal privacy if released (PP). I am mailing you a flash drive containing the responsive records in this production. All attachments in this document have been converted to pdf format. Microsoft Excel and Google Earth files can be made available in a different format upon request. All documents contained in this interim release will also be available to you electronically at <http://foialonline.regulations.gov/foia/action/public.home> next week. We are continuing to review additional, potentially responsive documents, and will supplement this response with additional documents that are releasable by August 29, 2014.

Thank you for your interest in this matter. If you have any questions, please contact Jim Pendergast at (202) 566-0398.

Sincerely,


John Goodin
Acting Director, Wetlands Division